STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ELIZABETH KUHL, SHANE KUHL, and JESSE KUHL, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JULIE MARIE KUHL,

Respondent-Appellant,

and

OTTO IVY and JAMES LAWSON,

Respondents.

UNPUBLISHED
August 12, 2003

No. 245238
Allegan Circuit Court
Family Division
LC No. 01-030007-NA

Before: Neff, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Respondent-appellant (hereinafter respondent) appeals as of right from the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(g) and (j). We affirm.

Child protective proceedings were initiated against respondent in September 2001, because her children were residing in a tent and not attending school. After the children were removed, it became apparent that they had been subject to continuing emotional harm while in respondent's custody. The court eventually terminated respondent's parental rights because of her emotional abuse of the children and failure to obtain appropriate treatment.

In a brief filed in propria persona, respondent raises thirty-three issues on appeal, none of which have merit.[1]

[1] Because of the overlapping nature of some issues and the cursory treatment of other issues raised in respondent's brief, we do not address each issue individually.

I

Respondent challenges the trial court's decision to terminate her parental rights. This Court reviews a trial court's findings of fact in a parental termination case under the clearly erroneous standard. A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 5.974(I).[2] See also *In re JK*, ___ Mich ___; 661 NW2d 216 (2003), slip op at 8-9. Deference must be given to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

The burden of proof is on the petitioner to prove a statutory ground for termination by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once that burden is met, pursuant to MCL 712A.19b(5), "the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *Id.* at 354. The court should decide the "best interests" question based upon all of the evidence presented and without regard to which party produced the evidence. *Id.* at 352-354. The court's decision regarding the child's best interests is also reviewed for clear error. *Id*. at 356-357.

The court terminated respondent's parental rights under MCL 712A.19b(3)(g) and (j), which provide as follows:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
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> * * *
>
> (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.
>
> * * *
>
> (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Contrary to what respondent appears to allege, the trial court was not required to find that she intentionally neglected the children or engaged in culpable conduct in order to terminate her parental rights. Our Supreme Court has rejected this interpretation of the term "neglect." See *In*

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[2] The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the trial court's decision.

re Jacobs, 433 Mich 24, 36-37; 444 NW2d 789 (1989). Section 19b(3)(g) plainly provides that its applicability is to be determined "without regard to intent." Similarly, § 19b(3)(j), by its plain language, does not require a showing of intent or culpability in order to warrant termination of parental rights under that subsection. Thus, there is no merit to respondent's claim that her parental rights could not be terminated absent culpable conduct on her part.

We also find no merit to respondent's argument that the trial court clearly erred when it found that respondent engaged in inappropriate questioning of the children during visits. Respondent repeatedly questioned the children about the circumstances in their foster home during visits. The court did not clearly err in finding that respondent's relentless questioning was harmful to the children.

Respondent also alleges that the children should have been returned to her because she found suitable housing,[3] attended parenting classes, and otherwise completed her treatment plan. We disagree. As this case progressed, it became apparent that the most important treatment goal was for respondent to attend and successfully complete psychological counseling. The family's problems were related to respondent's apparent personality disorder. Unless and until that issue was successfully addressed, the children could not safely return to her custody. Because she continually refused to cooperate and seek counseling, the trial court did not clearly err in finding that the children could not safely be returned to her care.

Regarding the children's best interests, we similarly find no clear error with the trial court's decision. Respondent repeatedly placed her own needs and interests above those of her children, and her relationship with the children was based on fear and manipulation. The evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo*, *supra*.

Furthermore, because the decision to terminate respondent's parental rights was supported by clear and convincing evidence, respondent's due process rights attendant to the custody of her children were not violated. *In the Matter of Render*, 145 Mich App 344, 347-348; 377 NW2d 421 (1985).[4]

II

Several of respondent's arguments on appeal involve challenges to the trial court's decision to assume jurisdiction over the children or other preliminary rulings made before the adjudicative trial. These issues are not properly before this Court.

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[3] Although the housing was deemed suitable, the home was for sale and respondent did not have a lease agreement. Thus, the length of availability of the housing was called into question. Additionally, caseworkers suspected that the home was the residence of another individual.

[4] Moreover, this Court has held that the "preponderance of the evidence" standard at the adjudicative trial is sufficient to satisfy due process protections. *In re Martin*, 167 Mich App 715, 724-726; 423 NW2d 327 (1988).

The trial court had previously entered an order of adjudication and an initial dispositional order placing the children in the temporary custody of the court. Any errors at the jurisdictional stage were required to be raised in a direct appeal of that decision. MCR 5.993(A)(1); *In re Hatcher*, 443 Mich 426, 439-444; 505 NW2d 834 (1993). Respondent may not now collaterally attack the court's jurisdictional decision in this subsequent appeal by right from the order terminating her parental rights. *Id*.; see also *In re Powers*, 208 Mich App 582, 587; 528 NW2d 799 (1995). Thus, to the extent that respondent raises issues relating to the trial court's decision to assume jurisdiction (including issues preceding the court's entry of the initial dispositional order), those issues are not properly before us.

III

We find no merit to respondent's claims that the trial court applied incorrect legal standards in its decision to terminate her parental rights or improperly shifted the burden of proof to respondent. Respondent correctly states that petitioner had the burden of proving a statutory ground for termination by clear and convincing evidence. *Trejo, supra* at 350. In its findings, it is apparent that the court was aware of the correct legal standard, because it expressly referred to the "clear and convincing evidence" standard. Further, although the court stated that it was not accepting respondent's arguments or evidence, this did not imply that it was improperly shifting the burden of proof to respondent.

IV

Respondent also suggests that the court erred in terminating her parental rights solely because she did not comply with petitioner's recommendations for treatment. In this regard, we find respondent's reliance on *In the Matter of Mason*, 140 Mich App 734; 364 NW2d 301 (1985), misplaced. In that case, this Court held that "[a] parent's failure to fully comply with a Department of Social Services treatment plan does not alone establish neglect, at least in the absence of clear and convincing evidence that the treatment plan was necessary to improve the parent's alleged neglectful behavior." *Id*. at 737. Under the facts of that case, this Court determined that there was not clear and convincing evidence of long-term neglect or that there were serious threats to the future welfare of the minor child. *Id*. at 738-739.

This case is factually distinguishable from *Mason, supra*. Here, it was shown by clear and convincing evidence that respondent required psychological treatment in order to correct the emotional harm her behavior was having on the children. Respondent's treatment plan was designed to address this issue by requiring the necessary treatment. The court ordered respondent to complete the treatment plan, but she refused to comply with the plan for treatment. Respondent has not shown that the trial court erred in terminating her parental rights, in part, because of her refusal to comply with this necessary requirement.

V

Respondent raises several issues advancing her argument that the trial court should have conducted this case as an inquiry, rather than a trial, by calling its own witnesses under MCR 5.923(A). That court rule allows a trial court to call other witnesses or have other evidence produced if it believes the evidence has not been fully developed. The decision whether to call

other witnesses or produce additional evidence under MCR 5.923(A) is discretionary with the court. Here, there is no evidence to indicate that the trial court abused its discretion by neglecting to further develop the record. Indeed, respondent does not fully explain how additional evidence, apart from that pertaining to the foster father's fitness, should have been developed or produced such that it would have affected the outcome. Respondent has not demonstrated error requiring reversal with regard to this issue.

Although respondent argues that the trial court should have inquired further into the foster father's fitness, we find no merit to this claim. Contrary to what respondent alleges, there was no competent evidence that the foster father had been arrested in 2001 on various drug charges. Although respondent alleged that her brother was deeply involved in drugs and was a heroin addict, she failed to present factual support for her allegations. The court took the claims seriously and directed petitioner to monitor the foster home, but the court also appropriately remained focused on the principal issue in the case, that being respondent's own fitness as a parent. We find no error.

VI

Respondent also alleges that the court erred in permitting Corey Volpi to testify at trial. Respondent did not preserve this issue with an appropriate objection below. Therefore, we review this issue for plain error affecting respondent's substantial rights. *Kern v Blethen-Coluni,* 240 Mich App 333, 336; 612 NW2d 838 (2000).

Respondent appears to argue that Volpi's testimony should not have been admitted because his trial testimony was contradicted by his written psychological evaluation of respondent and that the data and facts underlying Volpi's opinion testimony were not admitted. Volpi testified about the psychological tests that he administered during his evaluation of respondent. He testified that he could not rely on the test results to draw any conclusions about respondent because she refused to accurately complete the tests. We find no merit to respondent's argument that other data or facts regarding those tests should have been admitted, given that respondent's failure to complete the requisite tests prevented their availability or relevancy. Furthermore, we find nothing contradictory about Volpi's earlier written evaluation of respondent and his trial testimony. Plain error has not been shown. *Kern, supra*.

VII

Respondent alleges that the trial court clearly erred in finding that she did not cooperate with the caseworkers. We disagree. The record is replete with testimony and evidence documenting respondent's refusal to cooperate with caseworkers in order to enable her to take advantage of available services designed to help reunite her with her children. The court correctly found that respondent's personality made it difficult for anyone to work with respondent, even to offer her help. Respondent has failed to show that the trial court's findings with regard to this issue are clearly erroneous. *Miller, supra*.

We further find no support in the record for respondent's claim that the caseworkers engaged in reprehensible conduct by failing to offer her assistance. On the contrary, the record supports the trial court's finding that the caseworkers made reasonable efforts under the circumstances to assist respondent, and that it was respondent who refused to cooperate.

VIII

Respondent also argues that the trial court relied on false testimony at the termination hearing. She asserts that petitioner's witnesses testified falsely or enticed other witnesses to testify falsely. However, respondent does not indicate which witnesses offered false testimony. We conclude that respondent has waived this issue by failing to properly develop it. *Great Lakes Division of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 422; 576 NW2d 667 (1998).

IX

With regard to her remaining issues, respondent has either failed to argue the merits of the issue or failed to properly support her claims of error. Accordingly, we consider them abandoned and decline to address them. *Great Lakes Steel, supra*.

Affirmed.

/s/ Janet T. Neff
/s/ Karen M. Fort Hood
/s/ Stephen J. Borrello